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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/592,028	09/07/2006	Jeong-Min Lee	L69.12-0006	9384

27367 7590 07/02/2010
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EXAMINER

ALLEN, JEFFREY R

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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07/02/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/592,028	Applicant(s) LEE ET AL.	
	Examiner JEFFREY ALLEN	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/13/2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,7-9,15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,7-9,15 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Goncalves (U.S. Patent No. 4,386,696).

3. Goncalves discloses a cap assembly that can be associated with a container (1) storing a primary material (Fig. 1), the cap assembly comprising a lid fixed on a top of the container and provided with an exhausting portion (2) and a plurality of exhausting pieces (12) extending from a lower portion of the exhausting portion; a cap body (4) detachably coupled to the exhausting portion and having a storage tube (7) extending downward to define a storage chamber for storing a secondary material; and an inner cap (8) detachably coupled to the lower portion of the storage tube wherein the exhausting pieces are configured to detach the inner cap from the storage tube, and wherein they are coupled to the lid (since all the parts are connected to form one piece they are all coupled together) and extend radially inward from the lid and into the container (the exhausting pieces extend radially inward in relation to the location of the lid) and which contact the edge of the inner cap inserted in the lower end of the storage tube.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goncalves.

6. Goncalves teaches all the claimed limitations as shown above and wherein the exhausting pieces have a bending portion. In the present embodiment Goncalves fails to teach wherein the exhausting pieces are inserted between an upper end of the inner cap body and a lower end of the storage tube.

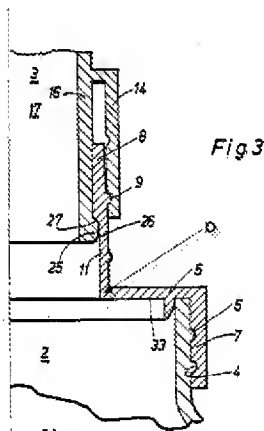
7. In an alternate embodiment Goncalves teaches wherein the exhausting pieces are inserted between an upper end of the inner cap body and a lower end of the storage tube (Fig. 5).

8. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have manufactured the embodiment of Goncalves with the exhausting pieces in the locations taught by the alternate embodiment, since it has been held that rearranging parts of an invention involves only routine skill in the art.

9. Claims 1, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hildebrandt et al. (U.S. Patent No. 4,203,517) in view of Goncalves.

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10. Regarding claim 1, Hildebrandt discloses a cap assembly that can be associated with a container storing a primary material (Fig. 1), the cap assembly comprising a lid (5) fixed on a top of the container and having an exhausting portion (8) projected upward; a cap main body (13) detachably coupled to the exhausting portion of the lid and having a storage tube (16) extending downward to define a storage chamber for storing a secondary material; and an inner cap body (29) detachably coupled to the storage tube. The exhausting portion tightly contacts an outer surface of the storage tube, further including an exhausting piece (D, Fig. 3 below labeled by examiner) extending radially inward into an exhausting space and including a bending portion for selectively separating the inner cap body.



11. Hildebrandt fails to teach wherein there is a plurality of exhausting pieces.

12. Goncalves teaches that it is known in the art to manufacture an exhausting assembly for a cap assembly that is made out of a plurality of exhausting portions (Fig. 2).

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13. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have manufactured the exhausting piece of Hildebrandt with a plurality of openings so that it is a plurality of exhausting pieces, as taught by Goncalves, so that the contents of the container could be mixed better.

14. Regarding claim 3, the modified cap assembly of Hildebrandt teaches wherein the bending portion is projected inward (Hildebrandt, Fig. 2).

15. Regarding claim 4, the modified cap assembly of Hildebrandt teaches wherein a top surface of the container and a lower surface of the lid are provided with respective attaching surfaces (Hildebrandt, 4 and 6) attached to each other.

16. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (KR 2003-0096163) in view of Gartner et al. (U.S. Patent No. 6,170,654).

17. Regarding claim 7, Lee discloses a cap assembly that can be associated with a container storing a primary material, the cap assembly comprising a lid (200) fixed on a top of the container and having a falling space (203) and an inner cap body (201) extending from the falling space; a cap main body (110) detachably coupled to the exhausting portion of the lid and having a storage tube (111) extending downward to define a storage chamber for storing a secondary material, a lower end of the storage chamber being closed by the inner cap body; a cap body (103) detachably coupled to the exhausting portion; a storage member that functions as a straw, the storage member being slidably inserted in the cap body to define storage chamber storing a secondary material and being closed by the inner cap body wherein a lower end of the

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chamber is opened when the storage member slides in a direction away from the inner cap body and the inner cap body remains coupled to the falling space (Fig. 2); and an outer cap body (100) detachably coupled to the exhausting portion, the storage member being coupled in the outer cap body; wherein removal of the outer cap body causes the storage member to slide in a direction away from the inner cap body and movement of the storage member is limited by a hooking step (104) and stopper (112).

18. Lee fails to teach wherein the cap assembly has a hook step on an exhausting portion and a stopper on a storage member.

19. Gartner teaches that it is known in the art to manufacture a cap assembly with a hook step (20) on an exhausting portion and a stopper (19) on a storage member so that the travel of the storage member is restricted (col. 3, lines 23-27).

20. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have manufactured the cap assembly of Lee with the hook step and stopper taught by Gartner in order to restrict the movement of storage member so that it is not lost during use.

21. Regarding claims 8 and 9, Lee discloses wherein the cap body is provided at an inner portion with a hooking step that engages with the stopper of the storage member and the storage member has a portion detachably coupled on an inner surface of the outer cap body (Lee, Fig. 1).

Response to Arguments

22. Applicant's arguments filed 4/13/2010 have been fully considered but they are not persuasive.

23. Regarding applicant's argument that Goncalves fails to show a plurality of exhausting pieces which extend radially inward, it is noted that the exhausting pieces extend radially inward with respect to the outer portion of the cap 4. Furthermore, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Hildebrandt teaches the use of an exhausting portion and Goncalves is relied on to teach that an exhausting piece can be formed into multiple exhausting pieces. It has also been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

24. Regarding applicant's argument that the exhausting pieces of Goncalves are not used for selectively separating the inner cap body from the storage tube, it is noted that the storage tube 7 of Goncalves is separated from the inner cap body 8 by the exhausting pieces 12.

25. Applicant's arguments with respect to claims 7-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

26. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY ALLEN whose telephone number is (571)270-7426. The examiner can normally be reached on Monday through Friday 8:00 AM TO 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. A./
Examiner, Art Unit 3781

/Anthony Stashick/
Supervisory Patent Examiner, Art
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